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09/587,197	06/05/2000	Jack O. Cartner	CRT 2 0017	8327

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EXAMINER
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PETRAVICK, MEREDITH C

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/587,197  
Filing Date: June 05, 2000  
Appellant(s): CARTNER, JACK O.

**MAILED**  
JAN 14 2005  
**GROUP 3600**  
**GROUP 3600**

Jay F. Moldovanyi, Reg. No. 29,678  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 10, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 10, 17, 19, 65, 68, 72 and 73 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

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5,657,620                      THAGARD ET AL.                      8-1997

6,048,275                      FASSAUER                      9-1991

MoTrim Boom Mower Brochure 11-1996

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 68-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 68 includes the limitation, “which angled sections together form a single corner of said deck.” However in the body of the claim, the guard is not listed as part of the deck but merely as part of the mower head. Further, the deck is recited as having four corners and the guard as being attached to the four sides of the deck. This new limitation cause the claim to be indefinite because it is unclear whether the deck and guard are separate parts of the mower head attached to each other or the deck comprises the guard.

Claims 11, 13, 17, 65-66 and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobey 3,496,707

Kobey discloses a mower including:

- a deck (20) with at least four sides with at least three rigid sidewalls (40)
- at least one cutting blade (24)
- a guard (34)

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The guard is attached via a hinge (42) between two sidewalls. The guard extends at obtuse angle from the sidewalls (Figure 1).

In regards to claims 66 and 69, an actuating member (52) is mounted on the deck and on the guard away from the hinge.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of Thaguard et al. 5,657,620.

Kobey discloses the invention described above. Kobey states, "Although but a single specific embodiment has been illustrated, I realize that certain changes and modifications therein may well occur to those skilled in the art within the broad teaching thereof (Column 3, lines 26-29)." However, Kobey uses a manually operated cable (52) to open and close the guard instead of a hydraulic cylinder and piston assembly.

Like Kobey, Thaguard et al. discloses a guard on a mower deck, which opens and closes. Unlike Kobey, Thaguard et al. teaches providing a hydraulic cylinder and piston (182) for opening and closing the guard. Thaguard et al. teaches that this is one particularly preferred method (Column 6, lines 53-60).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the cable actuator of Kobey with a hydraulic cylinder and piston actuator, in order to facilitate operator ease.

Claims 39-40 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of Thaguard et al.

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Kobey discloses the invention described above. Kobey states, "Although but a single specific embodiment has been illustrated, I realize that certain changes and modifications therein may well occur to those skilled in the art within the broad teaching thereof (Column 3, lines 26-29)." However, Kobey has a rigid sidewall on the guard instead of a flap.

Like Kobey, Thaguard et al. discloses a guard on a mower deck with a sidewall. Unlike Kobey, Thaguard et al. teaches making the sidewall a folding one-piece flap (Column 8, lines 33-44). The flap is spaced from a plane of the guard. Thaguard et al. teaches that this exposes the blade for cutting.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sidewall of the guard in Kobey, a flap as in Thaguard et al., in order to increase cutting efficiency by increasing exposure of the blade.

Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of the MoTrim Boom Mower Brochure, cited by applicant.

Kobey discloses the claimed deck and guard assembly detailed above. Kobey states, "Although but a single specific embodiment has been illustrated, I realize that certain changes and modifications therein may well occur to those skilled in the art within the broad teaching thereof (Column 3, lines 26-29)." However, the mower in Kobey is a push mower instead of a boom mower.

Like Kobey, the MoTrim Boom Mower Brochure discloses a mower head with a guard used to cut brush. Unlike Kobey, the mower deck and guard assembly is attached to a boom.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to alternately attach the mower deck and guard assembly of Kobey to a boom as in the Mo Trim Boom Mower Brochure, as one commonly know equivalent alternative means of moving a mower.

### **NEW GROUNDS OF REJECTION**

Claims 68-69 rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of Fassauer 5,048,275.

Kobey discloses a mower head including:

- a deck (20) having at least four sides and three side walls
- at least one cutting blade (24) rotatably mounted to the deck and parallel to the deck
- a guard (34) attached to the deck via a hinge, with is mounted at an angle in relation to two adjacent one of the at lest four sides of the deck

The guard is formed of a plurality of discretely angled section (Fig. 2), which angled section form a single corner of the deck. Kobey states, "Although but a single specific embodiment has been illustrated, I realize that certain changed and modifications therein may well occur to those skilled in the art within the broach teaching thereof (Column 3, lines 26-29)." However, the deck in Kobey only has three corner and not four corners since part of the deck of Kobey is circular.

Like Kobey, Fassauer discloses a mower deck. Unlike Kobey, Fassauer teaches that a mower deck can be circular or rectangular (Column 6, lines 53-55).

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Given the teaching in Fassauer, one of ordinary skill in the art at the time the invention was made would make the circular part of the deck in Kobey rectangular as taught in Fassauer as being equivalent.

Claims 40 and 70-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of Fassauer as applied to claim 68 above, and further in view of Thaguard et al.

Kobey discloses the invention described above. However, Kobey has a rigid sidewall on the guard instead of a flap.

Like Kobey, Thaguard et al. discloses a guard on a mower deck with a sidewall. Unlike Kobey, Thaguard et al. teaches making the sidewall a folding one-piece flap (Column 8, lines 33-44). The flap is spaced from a plane of the guard. Thaguard et al. teaches that this exposes the blade for cutting.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sidewall of the guard in Kobey, a flap as in Thaguard et al., in order to increase cutting efficiency by increasing exposure of the blade.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobey in view of Fassauer as applied to claim 69 above, and further in view of Thaguard et al.

The combination discloses the invention described above. However, the combination uses a manually operated cable (Kobey 52) to open and close the guard instead of a hydraulic cylinder and piston assembly.



Like the combination, Thaguard et al. discloses a guard on a mower deck, which opens and closes. Unlike the combination, Thaguard et al. teaches providing a hydraulic cylinder and piston (182) for opening and closing the guard. Thaguard et al. teaches that this is one particularly preferred method (Column 6, lines 53-60).

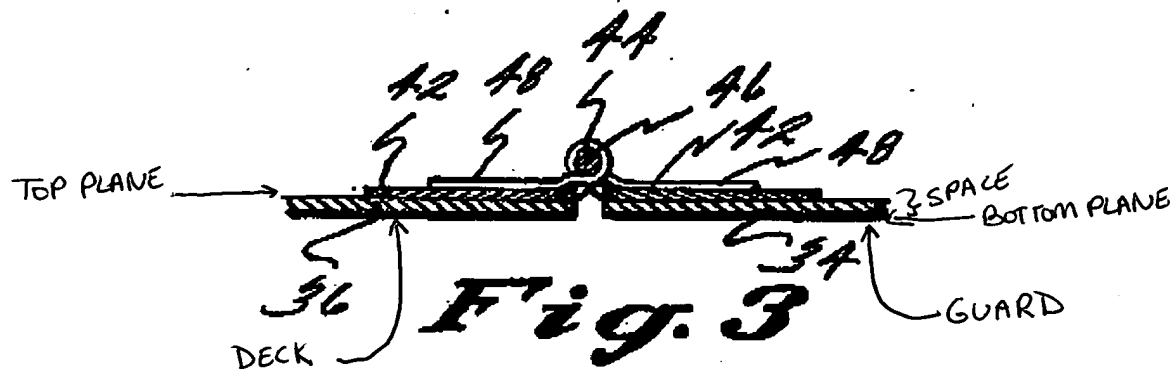
It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the cable actuator of the combination with a hydraulic cylinder and piston actuator, in order to facilitate operator ease.

**(11) Response to Argument**

**A. Regarding claim 65**

Applicant argues that claim 65 defines over Kobey, since Kobey does not show a guard with a horizontal plane that is parallel to and spaced from a horizontal plane of the deck in one orientation of the guard. Applicant assumes that the guard of Kobey has only one plane and that the deck of Kobey has only one plane. Based on this assumption, applicant argues that the plane has to be co-planar.

Contrary to applicant's assumption, the deck and guard of Kobey has more than one plane. Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> ed. defines plane as, "a flat or level surface." As shown in the marked up version of Figure 3 of Kobey below, both the guard and the deck has at least a bottom and top surface. The top surface or plane of the mower deck is spaced by the thickness of the guard from the bottom surface or plane of the guard. Therefore, Kobey does show a guard with a horizontal plane that is parallel to and spaced from a horizontal plane of the deck.



Marked Up Figure 3 of Kobey for Claim 65

Applicant also argues that the Examiner is taking contrary positions regarding the rejections under Kobey of canceled claim 61 and claim 65. Claim 61 limited a horizontal plane of the deck to being co-planar with a horizontal plane of the guard. However, the applicant is again assuming that there is only one plane on the guard and the deck. As pointed out above, the guard and deck of Kobey each have at least two horizontal planes. Therefore, in rejecting claim 61 the examiner can select the top plane of both the mower deck and guard, which are co-planar while rejecting claim 65 as above. When reading the term “plane” correctly, the rejection of claims 61 and 65 do not give conflicting interpretations of Kobey.

### B. Claim 10

Applicant argues that claim 10 is patentable over the combination of Thagard et al. and Kobey because neither show a piston on a deck with a piston on a deck has a horizontal plane spaced from a horizontal plane of a guard and adding a hydraulic cylinder with a piston to Kobey is not obvious.

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First, regarding applicant's argument that neither Thagard et al. or Kobey discloses a deck which has a horizontal plane spaced from a horizontal plane of a guard, Applicant makes no additional statements regarding this argument with regards to claim 10. Claim 10 depends from claim 66, which depends from claim 65. A response to this argument is given above.

Second, regarding applicant's argument that it is not obvious to combine the hydraulic cylinder with piston of Thagard et al. with the mower of Kobey. Claim 10 was rejected based on the combination of Kobey with Thagard et al. Kobey discloses the claimed mower with a deck (20) and a guard (34). The guard is lower and raised manually by a cable (52) attached to lever (54) on the handle of the mower. Thagard et al. also discloses a mower deck with a guard that is lower and raised. However, Thagard et al. provides a small hydraulic cylinder (182) on the deck for raising and lowering the guard. Thagard et al. expressly states that a hydraulic cylinder is the particularly preferred means of moving the guard (Column 6, lines 55-57). The motivation for the combination is found in the general state of the art as demonstrated by Thagard et al. The hydraulic cylinder facilitates operators ease. The operator is being assisted in lifting the weight of the guard.

Applicant also argues that the combination is not obvious since Kobey is a push mower and Thagard et al. discloses a pull mower. However, the method of moving the mower does not make a difference in how a guard on the deck is moved. The structure and size of Kobey and Thagard et al. are similar. Both the mowers in Kobey and Thagard et al. have a single blade covered by a housing. Both decks are only wide enough to cover the blade. Both mowers, are powered by sources that are not hydraulic.

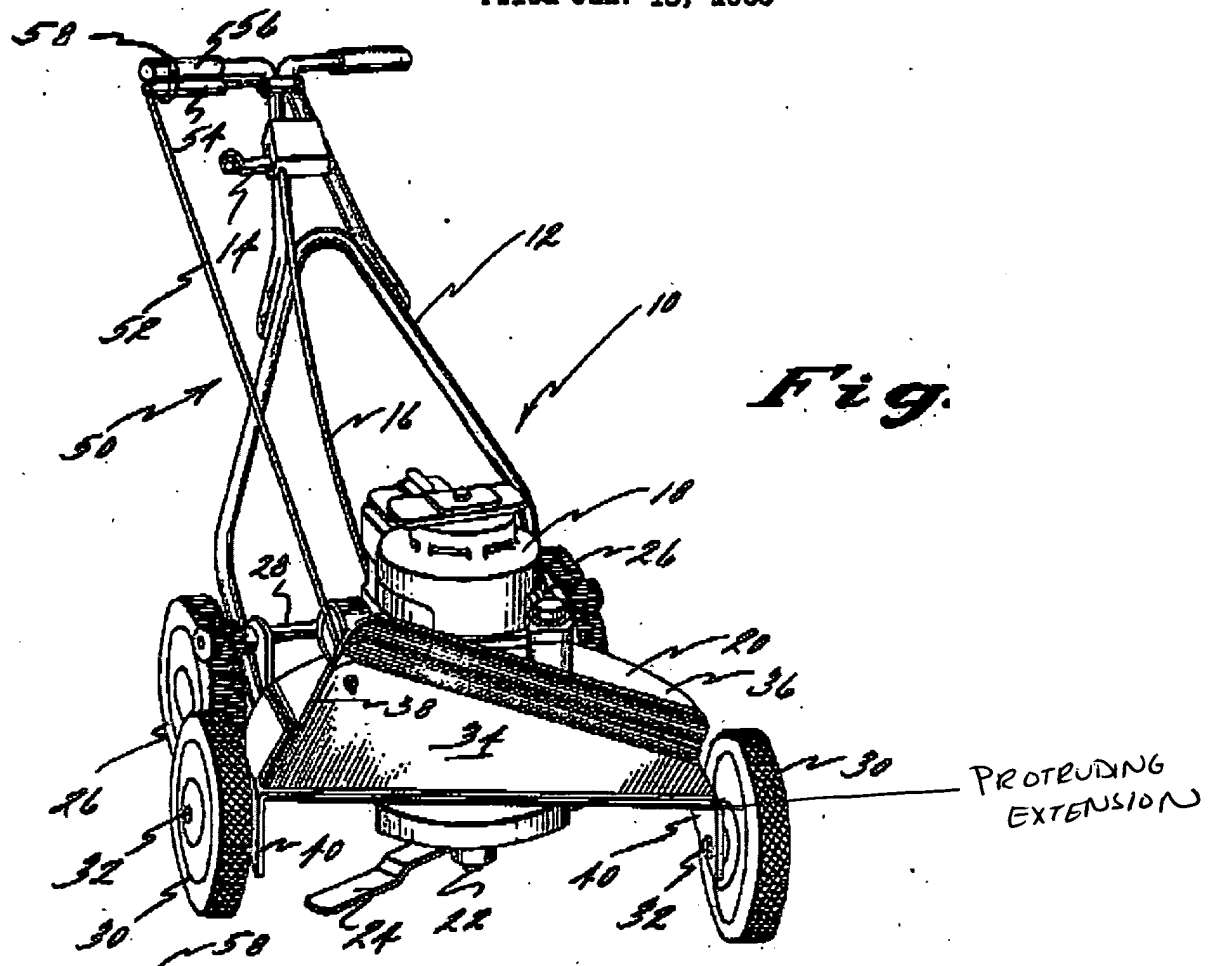
Applicant also argues that the combination is not obvious since there is no place on the housing of Kobey for the hydraulic cylinder. However, as pointed out the housing in Thagard et al. is sized to cover only one mower blade, like the housing in Kobey, but also includes two hydraulic cylinders. Further, a search of a push mower and hydraulics in the U.S. Pat. database show many patents having a push mower with hydraulic elements and a separate power source. This demonstrates that is known within the general state of the art that hydraulic can be added to the deck of push mowers.

Finally, Applicant states that Kobey and Thagard et al. teach away from the combination since they would destroy the function of one or the other. However, Applicant does not say how merely replacing the cable for lifting the guard in Kobey with a hydraulic cylinder as in Thagard et al. would destroy the Kobey mower. Both the cable and cylinder in Kobey and Thagard et al. function to move the guard.

#### C. Claim 17

Applicant argues that claim 17 defines over Kobey because Kobey does not have an extension protruding under the guard. Contrary to applicant's arguments Kobey does have a protrusion that extends under the guard as shown in the marked up version of Figure 1 of Kobey below. The extension protrudes under the guard when the guard is lifted.

Filed Jan. 15, 1968



Marked Up Figure 1 of Kobey for Claim 17

D. Claim 68

Claim 68 was rejected under 35 U.S.C. 112, second paragraph and 35 U.S.C. 102(b) and Applicant argues both rejections.

First, regarding the rejection under 35 U.S.C. 112, second paragraph, applicant points out how the embodiment of Figure 3A discloses a mower where a guard forms the corner of the

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deck. Applicant does not point out how the language of claim 68 relates to Figure 3A and is not indefinite as written.

Claim 68 states:

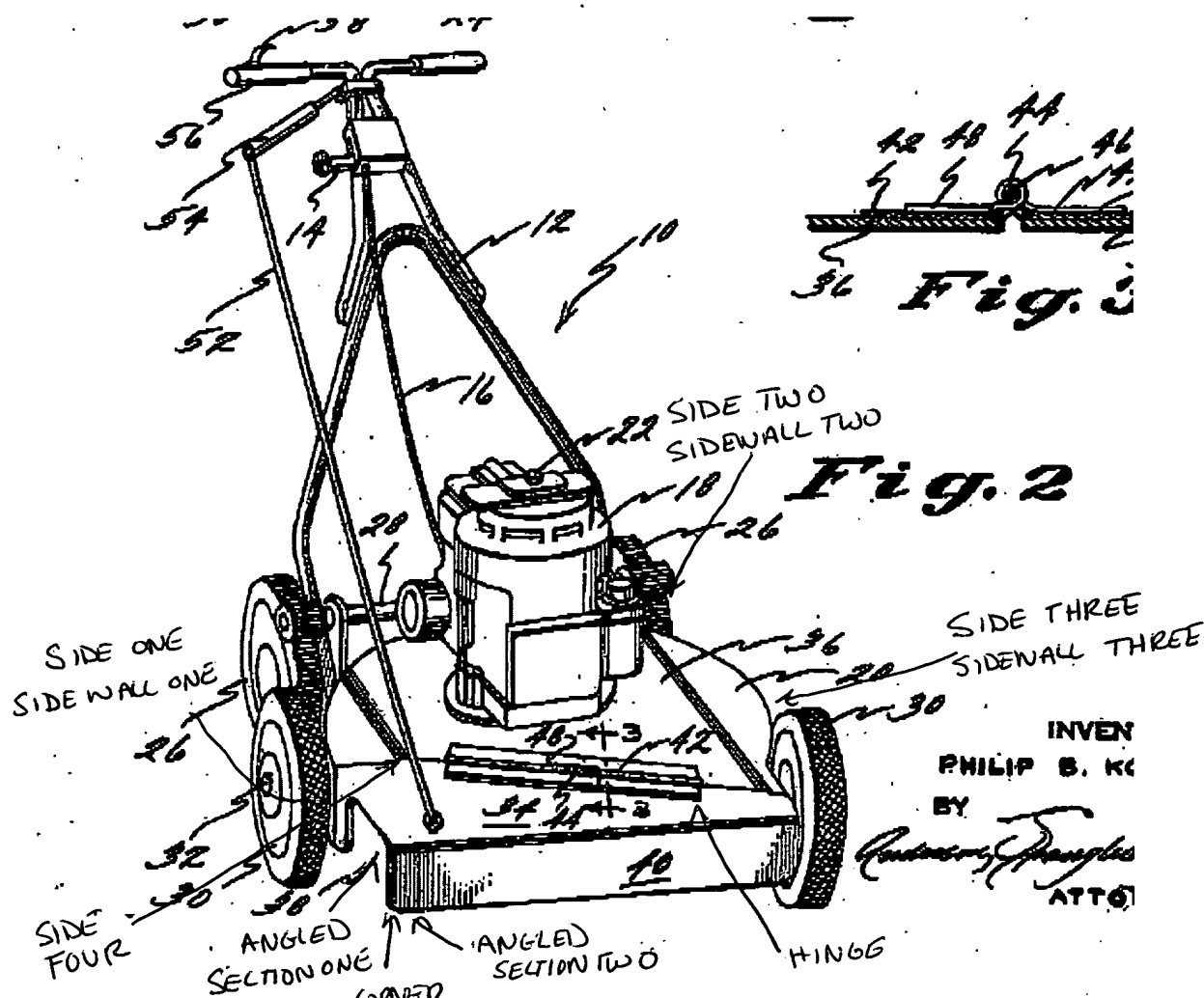
A mower head comprising:  
a deck comprising:  
at least four sides and four corners, and  
three side walls, one depending from each of three of said at least four sides, wherein two of said three side walls are rigid;  
at least one cutting blade rotatably mounted to said deck on an axis extending through said deck, said deck being disposed above and generally parallel to said blade;  
and  
a guard assembly comprising:  
a hinge mounted to and extending at an angle in relation to two adjacent ones of said at least four sides of said deck,  
a guard pivotally attached to said deck via said hinge, and  
said guard including a plurality of discretely angled section which angled sections together form a single corner of said deck.

Claim 68 recites that the mower head is formed of at least three separate parts: a deck, at least one cutting blade and a guard assembly. The first part of claim 68 recites that the deck has at least four corners. The last part of claim 68 then states, "said guard including a plurality of discretely angled section which angled sections together form a single corner of said deck." This statement makes the guard part of the deck instead of a separate part of the mower head. This causes confusion with the first part of the claim 68 since the first part of the claim states that the deck is comprised of at least four side and four corners.

Second, regarding the rejection under 35 U.S.C. 102(b), applicant argues that Kobey does not show a plurality of discretely angled sections forming a single corner of the deck. Applicant argues that the discretely angled sections in Kobey form the front wall and parts of two adjacent sidewalls and therefore cannot be a single corner.

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Contrary to applicant argument, the plurality of discretely angled section do form a single corner. Merriam-Webster's Collegiate Dictionary 10<sup>th</sup> ed. defines corner as "the point where converging lines, edges, or sides meet." Therefore, two angled edges meet to form a single corner. The front wall and the adjacent sidewall in Kobey meet to form a single corner as shown in marked up version of Figure 1 below.



Marked Up Figure 2 of Kobey for Claim 68

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E. Claim 19

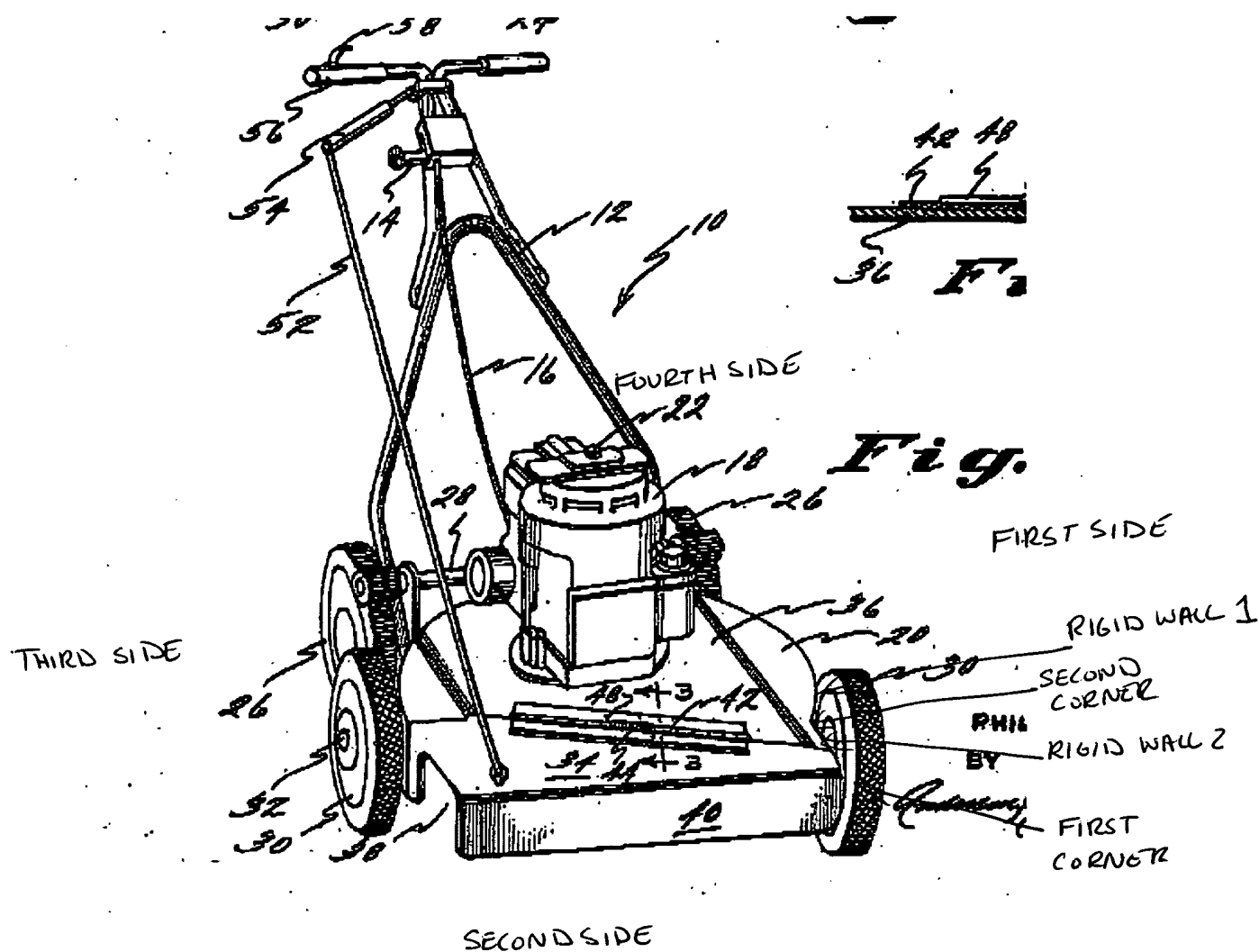
Applicant argues that neither Kobey nor Thagard, et al. discloses a hydraulic cylinder with a piston on a deck, which is spaced from a guard. Applicant incorporates his arguments with respect to claim 10. In response to this argument for claim 19, see response to claim 10 above.

F. Claim 73

Applicant argues that claim 73 is patentable over Kobey because Kobey does not disclose a two opposed corners along the front edge of the deck. However, claim 73 does not recite that the corner are located in the front edge of the deck. Applicant's claim only recites that the corners are located on a first side. The first side does not have to be the front side of the deck.

As seen in the marked up version of Figure 2 of Kobey below, the left side of Kobey has two corners that are adjacent. The first corner includes the guard. The second corner comprises two rigid sidewalls, one curving and one straight. As shown in marked up version of Figure 2 of Kobey below, claim 73 is disclosed by Kobey.





Marked Up Figure 2 of Kobey for Claim 73

### G. Claim 72

Applicant argues that claim 72 is patentable over Kobey in view of MoTrim because there “is no motivation in either MoTrim or Kobey to replace the deck and guard (which includes a guard that extends over the entire front edge of the mower), so modified that it extends over only a section of the deck, as called for in claim 72.”

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Claim 72 was rejected based on a combination of the entire mower head of Kobey with the teaching of MoTrim that a mower can also be moved by a boom. The mower head of Kobey meets all the limitations of the mower head of claim 72 as shown the marked up version of Figure 2 of Kobey below. The MoTrim reference was cited to teach that it is also known in the art to use a boom to move a mower. It is commonly known in the art that a mower head can be used on all types of mowers.

For the above reasons, it is believed that the rejections should be sustained.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent

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applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.


Respectfully submitted,



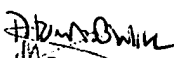


Meredith C. Petravick  
Primary Examiner  
GAU 3671

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Don Hajec

  
**APPROVED BY**  
**DONALD T. HAJEC**  
**DIRECTOR, TECHNOLOGY CENTER 3600**

Conferees:

TBW   
HCS   
MCP 

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